



STATE OF INDIANA

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January 12, 2016

Mr. Dexter Berry
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 15-FC-327; Alleged Violation of the Access to Public Records Act by the Marion Police Department

Dear Mr. Berry:

This advisory opinion is in response to your formal complaint alleging the Marion Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Department has responded via Kayla Butche. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 30, 2015.

BACKGROUND

Your complaint dated December 7, 2015 alleges the Marion Police Department violated the Access to Public Records Act by failing to provide the records requested.

You requested a copy of arrest records. The Department denied your request, stating they cannot release the arrest records to you since the records are for Grant County and you would have to obtain the records from another agency. You contend this denial is improper.

On January 8, 2015 the Department responded by releasing certain documents to you. The Department contends you amended your request when you filed your complaint. The Department states it has provided all documents that it possesses.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Marion Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1).

Accordingly, any person has the right to inspect and copy the Department's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(c). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(d).

Your original request, dated November 20, 2015 is for probable cause affidavits. The amended request included in this complaint is for the entire arrest record. The first request was denied because the Department did not have the records – another law enforcement agency apparently possessed the records.

Your second request is considerably broader than the original request. As such, the Department first noticed your amended request upon receipt of the facsimile from this Office. The Department has provided all of the records to you which it possesses and has therefore met its duty under the APRA.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Kayla Butche